

Section 17  
**ADMINISTRATION**

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17.01        **ZONING ADMINISTRATOR**

The Administrator, or his or her designee, is the Zoning Administrator (also called the Zoning Enforcement Officer) and shall have the following powers and duties:

1.        Receive and process all applications and petitions for zoning matters pursuant to this Zoning Code.
2.        Be responsible for the interpretation of the provisions and regulations of this Zoning Code.
3.        Be responsible for administering and enforcing this Zoning Code, including conducting of inspections required by this Zoning Code or as are necessary to ensure compliance with the provisions of this Zoning Code.
4.        Serve as a staff liaison to the Commission.
5.        Publish annually an up-to-date copy of the Zoning Map as provided by Illinois Compiled Statutes.
6.        Maintain for public inspection, during regular business hours, a copy of this Zoning Code together with the Zoning Map, along with all amendments thereto.
7.        Maintain all minutes and records of the Commission, and documents, including but not limited to ordinances and permits, that memorialize or authorize zoning actions taken by the City Council.
8.        Perform such other duties as are delegated to him or are provided for generally in this Zoning Code.
9.        To review and refer requests for variances, special uses permits and zoning amendments affecting designated landmarks or property within a designated historic district to the Historic

Preservation Commission after review and approval by the Commission.

10. To refer applications for construction, alteration, removal or demolition affecting proposed or designated landmarks or structures within designated historic preservation districts.

#### 17.02 **CERTIFICATE OF ZONING COMPLIANCE**

Upon the adoption of this Zoning Code no land shall be developed, no new use or structure shall be established or erected and no existing use or structure shall be enlarged, extended, altered, relocated or reconstructed until a Certificate of Zoning Compliance has been issued. The Zoning Administrator shall not issue a Certificate of Zoning Compliance unless it has been determined that the proposed work conforms to the applicable provisions of this Zoning Code.

1. Application: An application for a Certificate of Zoning Compliance shall be submitted to the Zoning Administrator in graphic and/or in narrative form containing the following:
  - a. Name, address and phone number of the applicant(s).
  - b. Name, address and phone number of the owner(s) or operator(s) of the proposed structure or use, if different.
  - c. Nature of the proposed use, including type of activity, manner of operation, number of occupants or employees and other related information.
  - d. Location of the proposed use or structure and its relationship to existing adjacent uses or structures.
  - e. Area and dimensions of the site for the proposed structure or use.
  - f. Number and size of proposed dwelling units, if any.
  - g. Location and number of proposed parking/loading spaces and access ways.
  - h. Any other information that the Zoning Administrator may require.
2. Relationship to Building Permits: Upon the effective date of this Zoning Code, the Building Commissioner shall not issue any building permit for the erection, enlargement, extension, alteration or reconstruction of any structure unless the applicant for such permit presents to the Building Commissioner a copy of the Certificate of Zoning Compliance pertaining to such work.
3. Corrective Action Orders: Whenever the Zoning Administrator finds by inspection or otherwise, that any lot, structure or use or work thereon is in violation of this Zoning Code, he/she shall so notify the responsible party and shall order corrective action.
4. Contents of Order: The order to take corrective action shall be in writing and shall include:
  - a. A description of the premises sufficient for identification.
  - b. A statement indicating the nature of the violation.
  - c. A statement of the remedial action necessary to effect compliance.
  - d. The date by which the violation must be corrected.

- e. A statement that the alleged violator is entitled to a conference with the Zoning Administrator if he/she so desires.
  - f. The date by which an appeal of the corrective action order must be filed and a statement of the procedure for so filing.
  - g. A statement that failure to obey a corrective action order shall result in revocation of the Certificate of Zoning Compliance and may result in the imposition of fines.
5. Service of Order: A corrective action order shall be deemed properly served upon the owner, occupant or operator of the offending lot, structure or use if it is: served personally; sent by certified or registered mail to his/her last known address; or posted in a conspicuous place on or about the affected premises.
  6. Stop Orders: Whenever any work is being done in violation of a Certificate of Zoning Compliance or this Zoning Code, the Zoning Administrator's corrective action order may state that the violation must cease immediately. In such cases, the corrective action order is equivalent to a stop order.
  7. Emergency Measures: Notwithstanding any other provisions of this Zoning Code, whenever the Zoning Administrator determines that any violation of this Zoning Code poses an imminent peril to life or property, he may institute without notice or hearing any necessary proceedings to alleviate the perilous condition. At the earliest possible time notice shall be served. Costs including attorney fees incurred by the City shall be paid by violator.
  8. Complaints: Whenever any violation of this Zoning Code occurs or is alleged to have occurred, any person may file a complaint to the Zoning Administrator. The Zoning Administrator shall record such complaints, immediately investigate and if necessary, institute appropriate corrective action.

**17.03 CERTIFICATE OF APPROPRIATENESS**

Upon adoption of this Zoning Code no structure or property designated as a landmark or for which designation as a landmark has been applied or which is included within the boundaries of a designated historic preservation district shall be developed, constructed, altered, removed, or demolished without first obtaining a certificate of appropriateness for such actions. Additional information is available in the City's Historic Preservation Ordinance.

**17.04 CONTINUANCE OF EXISTING USES**

Nothing in Sections 17.02 or 17.03 herein shall prevent the continuance of the present occupancy or lawful use of any existing building or zoning lot, except as provided in Section 6 of this Zoning Code, and except as may be necessary for the safety of life and property. Certificates for the continued occupancy of legal non-conforming uses existing at the time this Zoning Code and subsequent amendments become effective shall be issued by the Building Commissioner upon request, and the certificate shall state the use is non-conforming and does not conform with the provisions of this Zoning Code.

**17.05 PLANNING AND ZONING COMMISSION**

The Commission, in addition to its powers and duties as prescribed in Section 3.06 of the Marengo Municipal Code and State Statutes, shall have the powers and duties prescribed by this Chapter 22, Zoning Code, of the Municipal Code.

1. Commission Jurisdiction: The Commission is hereby vested with the following powers and duties:
  - a. To hear and decide appeals alleging error in any order, requirement, decision or determination of the Zoning Administrator or Building Commissioner relating to zoning matters set forth in this Zoning Code. After holding a public hearing, the Commission may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination of the Zoning Administrator or Building Commissioner.
  - b. To recommend to the City Council, after holding a public hearing, on applications or petitions for variations from the strict enforcement of any provisions of this Zoning Code, in accordance with the rules and standards hereinafter set forth.
  - c. To recommend to the City Council, after holding a public hearing, on applications and petitions for special uses listed in each of the several zoning districts.
  - d. To recommend to the City Council, after holding a public hearing, on applications and petitions for Planned Developments referred to it by the City Council and to hear and decide other matters referred to it or upon which it is required to pass under the provisions of this Zoning Code.
  - e. To sit as a special zoning commission for considering text amendments to this Zoning Code. After holding a public hearing on any proposed text amendments the Commission shall recommend to the City Council whether or not such text amendments should be passed. The Commission may also make recommendations for text amendments, after public hearing, on its own petition.
  - f. To recommend to the City Council, after holding a public hearing, on petitions for amendment of the provisions of this Zoning Code (a.k.a. text amendments) and the boundary lines of zoning districts herein established (a.k.a. re-zonings or map amendments). Nothing herein contained shall be construed to authorize the Commission to change any of the provisions of this Zoning Code or district boundary lines established hereby.
  - g. The concurring vote of four members shall be necessary to reverse any order, requirement, decision, or determination of the Building Commissioner or Zoning Administrator or to decide in favor of the petitioner or applicant in considering any matter upon which the Commission is authorized to act.
  - h. To transmit to the City Council, with every recommendation, a written finding of fact and to refer to any documents and exhibits containing plans and specifications relating to its recommendation, which documents, plans and specifications shall remain a part of the permanent records of the Commission. The finding of fact shall specify the reason or reasons for its recommendation. The recommendation, or the terms of any relief recommended, shall be incorporated into the finding of fact, and shall be specifically set forth in a conclusion of the finding.
2. Commission Meetings and Hearings: All meetings and hearings of the Commission shall be held at such times as the Commission and/or the Corporate Authorities may determine, and the schedule of such meetings and hearings shall be posted at City Hall. The presence of four Commissioners shall be necessary for a quorum. The Chairman, or Acting Chairman, may administer oaths and compel the attendance of witnesses. The Commission shall have the authority to adopt procedural rules for the conduct of its meetings and hearings consistent with

the provisions of this Chapter 17 and other codes and ordinances of the City. The Commission shall keep minutes of its proceedings, keep record of its examinations and other official actions, prepare findings of fact, and record the individual votes upon every question. Such minutes shall be filed with the City after each meeting or hearing, which shall be a public record.

3. Appeals and Stay of Proceedings: An appeal may be taken from any order, requirement, decision or determination of the Building Commissioner relating to zoning matters set forth in this Zoning Code by any person, firm or corporation aggrieved thereby, or by any officer, department, board or commission of the City. The appeal shall be taken within 45 days of the action complained of by filing a notice of appeal in duplicate, specifying the grounds thereof, in the office of the City Clerk who shall transmit forthwith one copy to the Building Commissioner and one copy to the Chairman of the Commission. The Building Commissioner shall forthwith transmit to the Chairman of the Commission all papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from unless the Building Commissioner certifies to the Commission that, by reason of facts stated in the certification, a stay would cause imminent peril to life or property. In such case the proceedings shall not be stayed except by a restraining order issued by the Commission or a court of record after notice to the Building Commissioner and on due cause shown.

The Commission shall select a reasonable time and place for the hearing of the appeal, give due notice thereof to all interested parties and shall render a written decision on the appeal without unreasonable delay. Any person may appear at the hearing and present testimony in person or by a duly authorized agent or attorney.

#### 17.06                    **VARIATIONS AND STANDARDS FOR VARIATIONS**

- A. Variations, Purpose and Intent: In order to accomplish the general purpose of this Zoning Code, consideration may be given to certain practical difficulties or hardships in carrying out the strict letter of regulations of this Zoning Code. The purpose of a variation is to provide relief from difficulties and hardships arising from requirements including, but not limited to, bulk, setback, height, parking and loading, and other regulatory elements of this Zoning Code. The term "variation" as used in this Zoning Code does not include and is not applicable to map amendments (rezonings), text amendments, or special uses. The Commission may recommend to the City Council variations of the regulations of this Zoning Code in harmony with their general purpose and intent only in the specific instances hereinafter set forth and grant by ordinance a variation to permit relief from any provision relating to the use, construction or alteration of buildings or structures or the use of land, where the Commission makes a finding of fact based on the standards hereinafter prescribed, when evidence in a specific case shows conclusively that literal enforcement of any provision of this Zoning Code would result in a practical difficulty or particular hardship because of unusual surroundings or condition of the property involved, or by reason of exceptional narrowness, shallowness or shape of the zoning lot, or because of unique topography, underground conditions or other unusual circumstances.
- B. Standards for Variations: Before recommending any variation, the Commission shall first determine based upon the evidence presented to it in each specific case that:
  1. The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in the zoning district in which it is located;
  2. The plight of the owner is due to unique circumstances;

3. The variation, if granted, will not alter the essential character of the locality; and
4. The variation, if granted, will be in harmony with the general purpose and intent of this Zoning Code.

For the purpose of implementing the above rules, the Commission shall also, in making its determination whether there are practical difficulties or particular hardships, take into consideration the extent to which the following facts and conclusions favorable to the applicant have been established by the evidence and are justified:

1. The particular physical surroundings, shape or topographical condition of the specific property involved would result in a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
  2. The conditions upon which the petition for a variation is based are unique to the property for which the variation is sought, and would not be applicable, generally, to other property within the same zoning classification;
  3. The purpose of the variation is not based exclusively upon a desire to increase the value of the property, the monetary gain to be realized from the property, or to alleviate financial difficulty experienced by the petitioner in the attempt to comply with the provisions of this Zoning Code;
  4. The alleged difficulty or hardship is caused by the application of this Zoning Code and has not been created by any person presently having an interest in the property;
  5. The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located;
  6. The proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fires, or endanger the public safety, or substantially diminish or impair property values in the neighborhood; and
  7. The granting of the variation requested will not confer on the applicant any special privilege that is denied by this Zoning Code to other lands, structures, or buildings of the same zoning classification.
- C. Administrative Variations: For existing structures that do not comply with the setback requirements for that zoning district, the Zoning Administrator may grant administrative variations of no more than 2.5 percent of the required setback. *Ord. 03-1-8*

17.07           **SPECIAL USES AND STANDARDS FOR SPECIAL USES**

See Section 15 of this Zoning Code.

17.08           **TEXT AMENDMENTS AND STANDARDS FOR TEXT AMENDMENTS**

For the purposes of promoting the public health, safety, comfort and general welfare, the City Council may, from time to time, upon recommendation of the Commission in the manner herein set forth, amend the regulations imposed and the zoning districts created by this Zoning Code. Before recommending any text amendment to this Zoning Code, the Commission shall make findings based upon the evidence presented to it in each specific case with respect to the following:

1. That the proposed amendment is beneficial to the orderly development of the City;
2. That the proposed amendment will benefit the public health, safety, comfort and general welfare of the community;
3. That the proposed amendment promotes the public interest and not solely the interest of the petitioner or applicant.

**17.09 RE-ZONINGS (MAP AMENDMENTS) AND STANDARDS FOR RE-ZONINGS**

For the purposes of promoting the public health, safety, comfort and general welfare, and conserving the values of property throughout the City, the City Council may, from time to time, upon recommendation of the Commission in the manner herein set forth, amend the zoning classification of property (also known as a re-zoning or a map amendment), provided that in all amendatory ordinances adopted under the authority of this Section 17.09, due consideration shall be given to a) existing conditions, b) the conservation of property values, c) the direction of property development and land use that is to the best advantage of the entire City, and d) the uses to which property is devoted at the time of the adoption of any such amendatory ordinance. Before recommending any change in the zoning classification of a particular property, the Commission shall make findings based upon the evidence presented to it in each specific case with respect to the following:

1. That the proposed re-zoning is not detrimental to the orderly development of the City;
2. That the proposed re-zoning will not be detrimental to or endanger the public health, safety, comfort or general welfare of the community;
3. That the request promotes the public interest and not solely the interest of the petitioner or applicant;
4. That the request is consistent with the existing uses of property within the general area of the property in question;
5. That the request is consistent with zoning classifications of property within the general area of the property in question;
6. That the property is not generally suitable for the uses permitted under the existing zoning classification;
7. That the trend of development, if any, in the general area of the property in question, including changes, if any, which may have taken place since the original zoning of the affected property was established supports the request;
8. That, if applicable, the length of time that the property in question has remained undeveloped under its current zoning is considered in the context of land development in the vicinity of the property in question;
9. That property values of the surrounding and adjacent property will not be substantially diminished or impaired; and
10. That the request is in harmony with the objectives of the Comprehensive Plan.

**17.10 CONDITIONS**

The Commission may recommend, and the City Council in granting any variation or special use may impose such conditions or restrictions as may be necessary to comply with the standards established in this Zoning Code, to reduce or minimize possible detrimental effects of such a variation or special use upon other adjacent properties, and to better carry out the general intent of this Zoning Code.

#### **17.11 CITY COUNCIL ACTION**

No action on any specific petition, application or case shall be made by the City Council without a hearing by the Commission as required herein, nor without a report thereof having been made by the Commission to the City Council. Said report shall consist of the hearing minutes and a finding of fact.

Upon the report of the Commission, the City Council, without further public hearing, may adopt, modify or deny any proposed petition or application or may refer the petition or application back to the Commission for further consideration.

In the event the Commission does not recommend that a zoning variation be granted a two-thirds vote of the City Council shall be required to grant the variation.

#### **17.12 CHANGE OF ZONING**

Nothing herein contained shall be construed to give or grant to the Commission the power or authority to alter or change the Zoning Code or any use district made a part of the zoning map; such power and authority being reserved to the City Council, and the Commission shall not have any power or authority with respect to any alterations or change of the Zoning Code except to make recommendations to the City Council in such specific cases as may properly come before the Commission.

#### **17.13 IMPLEMENTATION OF VARIATIONS/SPECIAL USES**

No order for a variation or special use permitting the erection or alteration of a building shall be valid for a period longer than six months, unless such use is established within such period, provided, however, that where such use permitted is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for said erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

#### **17.14 REVOCATION OF VARIATIONS/SPECIAL USES**

Whenever any variation or special use granted under the terms of this Zoning Code has been discontinued or abandoned for a period of six consecutive months, or whenever there is evidence of a clear intent on the part of the owner to abandon a variation or special use, such variation or special use, after being discontinued or abandoned, shall be considered void and the owner shall submit a new application or petition pursuant to this Zoning Code.

#### **17.15 PUBLIC HEARING REQUIREMENTS**

All hearings before the Commission shall require public notice. The Commission shall cause notice of a petition or application to be given in the following manner:

1. By publishing notice of the time and place of such hearing in a newspaper of general circulation in the City of Marengo, Illinois, at least 15 days prior to the hearing;
2. By causing said notice to contain the both the legal description and common address or location for which the petition or application is requested, as well as a brief statement describing the

nature of the petition or application; and

3. By sending a copy of the notice by certified mail, return receipt requested, to all property owners within 250 feet of the subject property. The notice shall be addressed to the person(s) who last paid property taxes.
4. By notifying such property owners, groups or organizations of the proposal in writing as the City deems desirable.

#### 17.16 WRITTEN PROTESTS

In the event of written protest against the petition or application, signed and acknowledged by the owners of 20 per cent of the frontage proposed to be altered, or by the owners of 20 percent of the frontage immediately adjoining or across the alley or rear line therefrom, or by the owners of 20 per cent of the frontage directly opposite the frontage proposed to be altered as to such regulations or zoning district, and filed with the City Clerk, such petition or application shall not be approved except by the favorable vote of two-thirds of all trustees then holding office.

#### 17.17 HEARING OFFICER ALTERNATIVE PROCESS

Pursuant to 65 ILCS 5/11-13-14.1, in the event the City Council determines that a zoning petition filed with the City to be heard by the Commission is likely to require a hearing of such duration or complexity so as to cause difficulties or hardships upon the members of the Commission to attend and adequately manage all of the sessions of the hearing, then the City Council may at its sole discretion by ordinance establish the position of Hearing Officer and delegate to said officer the authority to conduct said hearing. The hearing officer alternative process shall be established and conducted in the following manner:

1. Appointment, Qualifications and Duties of Hearing Officer: The City Council shall appoint a Hearing Officer to govern the proceedings under this Zoning Code. The Hearing Officer will preside over the hearing. The Hearing Officer shall be a licensed attorney in the State of Illinois. The Hearing Officer shall have the duty to conduct a fair hearing, to maintain order, and to ensure development of a clear, complete and concise record of the proceedings. The Hearing Officer, if requested by the Commission, shall prepare recommended findings of fact and law for consideration by the Commission.
2. Evidentiary Standards: The Hearing Officer shall not be bound by the strict rules of evidence as applied in the Courts of Illinois pertaining to civil actions. The Hearing Officer shall receive evidence which is material, relevant and would be relied upon by reasonably prudent persons in the conduct of serious affairs. When the admissibility of evidence depends upon an arguable interpretation of substantive law, the Hearing Officer shall admit such evidence.
3. Public Hearing Parameters: All parameters for public hearings, including but not limited to notice requirements, shall comply with this Zoning Code unless altered by the provisions listed in this Section 17.17:
  - a. Within a reasonable time from the date that the complete zoning petition is filed, the date, time and location of the hearing on the petition shall be determined by the Hearing Officer in consultation with the Commission, but the hearing shall begin no later than 90 days following said filing.
  - b. The City shall reserve the right to engage the services of one or more court reporters to provide transcripts of all sessions of the hearing, which transcripts shall be deemed

to constitute the minutes of the hearing. Any and all costs associated with such engagements, including the necessary copying of transcripts required for internal use by the City, the Commission, and the Hearing Officer, shall be borne by the petitioner.

- c. Any and all costs associated with the compensation and expenses of the Hearing Officer shall be at the petitioner's expense.
- d. The hearing shall be treated as if it were equal in all respects to a hearing conducted in normal circumstances by the members of the Commission, except that the attendance of one member of the Commission shall be deemed to constitute a quorum for the purposes of the hearing officer alternative process. After the Hearing Officer has closed all testimony and complete transcripts of the proceedings up to that point have been received, Commission members will then begin their deliberations in order to prepare a recommendation. Before beginning their deliberations, the Commission members shall be required to sign an affidavit attesting that they have received and read all the transcripts of the proceedings as a substitute for any sessions at which any member may not have been able to be in attendance. The deliberative and recommendation phase of the proceedings by the Commission shall require the normal quorum of four members to be in attendance.
- e. If, in the City's opinion, City facilities are not sufficient to accommodate the number of persons expected to attend the hearing, the City may arrange for the hearing to be conducted at another site. In such a circumstance, the City is authorized to rent appropriate facilities and equipment, including but not limited to an adequately-sized meeting space such as an auditorium, as well as a sound system, chairs, tables, and associated services such as custodians and set-up personnel as may be necessary to conduct a proper hearing. Any and all costs associated with such arrangements shall be at the petitioner's expense.
- f. The City Attorney or his designee shall serve as legal advisor, and the City Administrator or his designee shall serve as staff advisor, to the Hearing Officer and Commission.
- g. All testimony at the hearing shall be under oath or affirmation.
- h. Any person appearing at the hearing shall have the right to give testimony and comment on the zoning petition. Any person testifying shall be required to state their name and address and who they are representing.
- i. The Hearing Officer reserves the right to prevent argumentative comments, prohibit personal attacks on other parties, maintain order and decorum during the hearing process, and prevent irrelevant, incompetent and unnecessarily cumulative or repetitive materials in the record. The Commission members reserve the right at all times to ask questions of or reply to any party testifying in order to clarify an issue, statement or fact.
- j. Any person shall have the right to be represented by a licensed attorney-at-law at the hearing. Such attorneys shall have the right of reasonable cross-examination. The scope of cross-examination shall be determined by the Hearing Officer.
- k. The City, at its sole discretion, shall have the right to determine whether the information provided can be evaluated by qualified professionals on its staff, and if the City cannot accomplish this evaluation because such qualified personnel are not available and the employment of such persons would impose a financial burden upon the City, then the

City shall have the authority to retain the services of one or more professional consultants to assist the City staff and Commission in the process of reviewing any aspect of the zoning petition. Any and all expenses of such services shall be at the petitioner's expense. Such consultants shall have the same standing to testify and to be cross-examined as may be necessary as any other witnesses at the hearing.

- I. Members of the public shall be allowed to obtain copies of any documents filed with the City upon application and payment to the City of the actual cost of reproduction in accordance with the Freedom of Information Act.
  
- m. The City, in consultation with the Hearing Officer and the Commission, shall have the authority to establish reasonable rules and procedures for the conduct of hearings and the order of business to be followed during hearings.

*pjh:Marengo.Zone\Section17.Administration*